

ESTTA Tracking number: **ESTTA722270**

Filing date: **01/22/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92059488
Party	Plaintiff Brooks Sports, Inc.
Correspondence Address	WILLIAM C RAVA PERKINS COIE LLP 1201 THIRD AVENUE , 49TH FLOOR SEATTLE, WA 98101 UNITED STATES pctrademarks@perkinscoie.com, wrava@perkinscoie.com, ajagar- cia@perkinscoie.com
Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	Alexander Garcia
Filer's e-mail	pctrademarks@perkinscoie.com, wrava@perkinscoie.com, ajagar- cia@perkinscoie.com
Signature	/Alexander Garcia/
Date	01/22/2016
Attachments	ONE MISO.pdf(4896182 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

BROOKS SPORTS, INC.,

Petitioner,

v.

ANTA (CHINA) CO. LTD.,

Registrant.

Cancellation No.: 92059488

CONSENT MOTION TO FILE
FIRST AMENDED PETITION
FOR CANCELLATION

Mark: ANTA & LOGO
Registration No.: 2,750,817

Brooks Sports, Inc. ("Petitioner") hereby amends the Petition for Cancellation filed in the instant case, in the form attached as **Exhibit 1** hereto.

PROCEDURAL HISTORY AND AMENDED PETITION

On June 30, 2014, Petitioner filed a Petition for Cancellation, commencing this proceeding. A party to an *inter partes* proceeding before the Board may amend its pleading "with the opposing party's written consent." FED. R. CIV. P. 15(a)(2); *see also* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE ("T.B.M.P.") § 507.02. On January 11, 2016, Registrant provided written consent to the amendment of the Petition for Cancellation.

As recommended by the Board, Petitioner submits a clean copy of the First Amended Petition for Cancellation (**Exhibit 1**) and a red-lined copy showing the changes for the First Amended Petition for Cancellation (**Exhibit 2**). *See* T.B.M.P. § 507.01.

WHEREFORE, Petitioner submits the First Amended Petition for Cancellation, attached as **Exhibit 1** hereto.

DATED: January 22, 2016

Respectfully submitted,

CERTIFICATE OF SERVICE

I hereby certify that this CONSENT MOTION TO FILE FIRST AMENDED PETITION FOR CANCELLATION is being transmitted to Timothy J. Lockhart, Willcox & Savage PC, 440 Monticello Avenue, Suite 2200, Norfolk, Virginia 23510-2243 to counsel's email address of record tlockhart@wilsav.com and pursuant to the mutual agreement of the parties to electronic service.

Signature: /Alexander Garcia/

Printed Name: Alexander J.A. Garcia

PERKINS COIE LLP

By /s/ William C. Rava
William C. Rava
Alexander J.A. Garcia
Jonathan P. Goddard

Attorneys for Petitioner
1201 Third Avenue, 49th Floor
Seattle, Washington 98101

Phone: (206) 359-8000

Exhibit 1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

BROOKS SPORTS, INC.,

Petitioner,

v.


ANTA (CHINA) CO. LTD.,

Registrant.

Cancellation No.: 92059488

FIRST AMENDED PETITION FOR
CANCELLATION

Mark: ANTA & LOGO
Registration No.: 2,750,817

Brooks Sports, Inc. ("Petitioner") believes that it will be damaged by the continued registration by Anta (China) Co. Ltd. ("Registrant") of the mark  (the "Registered Mark") in International Class 25, and covering those goods ("Registered Goods") listed in Registration No. 2,750,817 ("Registration"), and hereby petitions to cancel the Registration. Petitioner and Registrant both design, produce, market and sell athletic shoes, apparel and accessories, and Petitioner asserts this Petition for Cancellation as part of a global controversy with Registrant related to each parties' use of and rights in their respective trademarks and their ability to coexist on various trademark registers. As grounds for its petition, Petitioner alleges as follows:

I. PARTIES

1. Petitioner is a Washington corporation, having a place of business in Seattle, Washington.
2. On information and belief, Registrant is a company of China, having a place of business in Jinjiang City, China.

II. THE REGISTERED MARKS AND REGISTRATIONS

3. Registration No. 2,750,817 issued on August 12, 2003, from Application No. 76/076,957 filed by Anta (Fujian) Shoes Industry Co. Ltd. on June 26, 2000.
4. On or about August 7, 2002, Registrant, or its predecessor in interest, Anta (Fujian) Shoes Industry Co. Ltd., filed a Declaration in support of a Statement of Use in support of Application No. 76/076,957 ("Statement of Use Declaration").
5. As evidence of use in support of the Statement of Use Declaration, Registrant, or its predecessor in interest, Anta (Fujian) Shoes Industry Co. Ltd., submitted **Exhibit A**.
6. According to the Trademark Assignment Abstract of Title for the Registration, Anta (Fujian) Shoes Industry Co. Ltd. executed a document on December 29, 2006, which assigned the entire interest in the Registration to Registrant.
7. According to the Trademark Assignment Abstract of Title for the Registration, the document assigning the Registration to Registrant was recorded on January 3, 2007.
8. On August 13, 2008, Registrant filed an Affidavit of Use in support of a Combined Declaration of Use and Incontestability under Sections 8 & 15 for the Registration ("8 & 15 Affidavit").
9. In the 8 & 15 Affidavit, Registrant attested that it had "...continuously used the mark in commerce on or in connection with the goods and/or services [in the Registration] for five (5) consecutive years ..."
10. In the 8 & 15 Affidavit, Registrant also attested that it was "using the mark in commerce on or in connection with the goods and/or services identified" in the Registration.
11. As evidence of use in support of the 8 & 15 Affidavit, Registrant submitted **Exhibit B**.

12. On February 7, 2013, Registrant filed a Combined Declaration of Use and Application for Renewal of Registration of Mark under Sections 8 & 9 for the Registration (“8 & 9 Declaration”).

13. In the 8 & 9 Declaration, Registrant attested that “...the mark is in use in commerce on or in connection with the goods/services identified” in the Registration.

14. As evidence of use in support of the 8 & 9 Declaration, Registrant submitted **Exhibit C.**

III. CLAIMS

A. ABANDONMENT

15. Petitioner realleges and incorporates by reference the preceding allegations of its First Amended Petition for Cancellation.

16. On information and belief, Registrant has ceased using the Registered Mark, in commerce, in connection with the Registered Goods, with no intent to resume use of the Registered Mark.

17. On information and belief, Registrant has discontinued use of the Registered Mark, in commerce, for a period of at least three consecutive years.

18. On information and belief, Petitioner believes that Registrant does not have business operations in the United States, supporting the conclusion that use of the Registered Mark was discontinued, or never commenced, in commerce for such a period following the registration date for the Registered Mark.

19. The continued registration of the Registered Mark would prevent Petitioner from exercising exclusive control over the goodwill and reputation associated with Petitioner’s marks.

20. As Registrant abandoned the Registered Mark in connection with the Registered Goods, and does not have an intent to resume use of the Registered Mark in

connection with the Registered Goods, pursuant to Section 14 of the Trademark Act, 15 U.S.C. § 1064, the Registration should be cancelled.

B. REGISTERED MARK NOT IN USE

21. Petitioner realleges and incorporates by reference the preceding allegations of its First Amended Petition for Cancellation.

22. On information and belief, as of the filing date of the Statement of Use Declaration, Registrant, or its predecessor in interest Anta (Fujian) Shoes Industry Co. Ltd., was not using the Registered Mark, in commerce, in connection with the Registered Goods.

23. On information and belief, as of the filing date of the 8 & 15 Affidavit, Registrant was not using the Registered Mark, in commerce, in connection with the Registered Goods.

24. On information and belief, prior to filing the 8 & 15 Affidavit, Registrant was not continuously using the Registered Mark, in commerce, in connection with the Registered Goods for a period of five (5) years prior to filing the 8 & 15 Affidavit.

25. On information and belief, as of the filing date of the 8 & 9 Declaration, Registrant was not using the Registered Mark, in commerce, in connection with Registered Goods.

26. On information and belief, Registrant has never used the Registered Mark, in commerce, in connection with the Registered Goods.

27. As Registrant, or its predecessor in interest Anta (Fujian) Shoes Industry Co. Ltd., was not using the Registered Mark, in commerce, in connection with the Registered Goods as of the date of filing the Statement of Use Declaration, the Registration should be cancelled.

28. As Registrant was not using the Registered Mark, in commerce, in connection with the Registered Goods as of the date of filing the 8 & 15 Affidavit, the Registration should be cancelled.

29. As Registrant was not using the Registered Mark, in commerce, in connection with the Registered Goods as of the date of filing the 8 & 9 Declaration, the Registration should be cancelled.

30. As Registrant has never used the Registered Mark, in commerce, in connection with the Registered Goods, the Registration should be cancelled.

C. FRAUD ON THE TRADEMARK OFFICE

31. Petitioner realleges and incorporates by reference the preceding allegations of its First Amended Petition for Cancellation.

32. On information and belief, as of the filing date of the Statement of Use Declaration, Registrant, or its predecessor in interest Anta (Fujian) Shoes Industry Co. Ltd., was not using the Registered Mark, in commerce, in connection with the Registered Goods.

33. On information and belief, as of the filing date of the 8 & 15 Affidavit, Registrant was not using the Registered Mark, in commerce, in connection with the Registered Goods.

34. On information and belief, prior to filing the 8 & 15 Affidavit, Registrant was not continuously using the Registered Mark, in commerce, in connection with the Registered Goods for a period of five (5) years prior to filing the 8 & 15 Affidavit.

35. On information and belief, as of the filing date of the 8 & 9 Declaration, Registrant was not using the Registered Mark, in commerce, in connection with the Registered Goods.

36. On information and belief, Registrant, or its predecessor in interest Anta (Fujian) Shoes Industry Co. Ltd., submitted a false Statement of Use Declaration in support of the Application with the intent to procure the Registration.

37. On information and belief, Registrant, or its predecessor in interest Anta (Fujian) Shoes Industry Co. Ltd., knowingly and willfully submitted a false Statement of Use Declaration in support of the Registration with the intent to procure the Registration.

38. On information and belief, Registrant's, or its predecessor in interest Anta (Fujian) Shoes Industry Co. Ltd.'s, false Statement of Use Declaration was material to procuring the Registration.

39. On information and belief, Registrant submitted a false 8 & 15 Affidavit in support of the Registration with the intent to maintain the Registration.

40. On information and belief, Registrant knowingly and willfully submitted a false 8 & 15 Affidavit in support of the Registration with the intent to maintain the Registration.

41. On information and belief, Registrant's false 8 & 15 Affidavit was material to maintaining the Registration.

42. On information and belief, Registrant submitted a false 8 & 9 Declaration in support of the Registration with the intent to maintain the Registration.

43. On information and belief, Registrant knowingly and willfully submitted a false 8 & 9 Declaration in support of the Registration with the intent to maintain the Registration.

44. On information and belief, Registrant's false 8 & 9 Declaration was material to maintaining the Registration.

45. Accordingly, Registrant is not entitled to maintain the Registration and the Registration should be cancelled pursuant to § 14 of the Lanham Act, 15 U.S.C. § 1064.

IV. REQUEST FOR RELIEF

WHEREFORE, Petitioner requests that Registration No. 2,750,817 be canceled.

V. FEES

The \$300.00 fee for this First Amended Petition for Cancellation has been electronically submitted.

DATED: January 22, 2016

CERTIFICATE OF SERVICE

I hereby certify that this FIRST AMENDED PETITION FOR CANCELLATION is being transmitted to Timothy J. Lockhart, Willcox & Savage PC, 440 Monticello Avenue, Suite 2200, Norfolk, Virginia 23510-2243 to counsel's email address of record tlockhart@wilsav.com and pursuant to the mutual agreement of the parties to electronic service.

Signature: /Alexander Garcia/

Printed Name: Alexander J.A. Garcia

Respectfully submitted,

PERKINS COIE LLP

By: /s/ William C. Rava

William C. Rava

Alexander J.A. Garcia

Jonathan P. Goddard

Attorneys for Opposer
1201 Third Avenue, 49th Floor
Seattle, Washington 98101

Phone: (206) 359-8000

Exhibit A

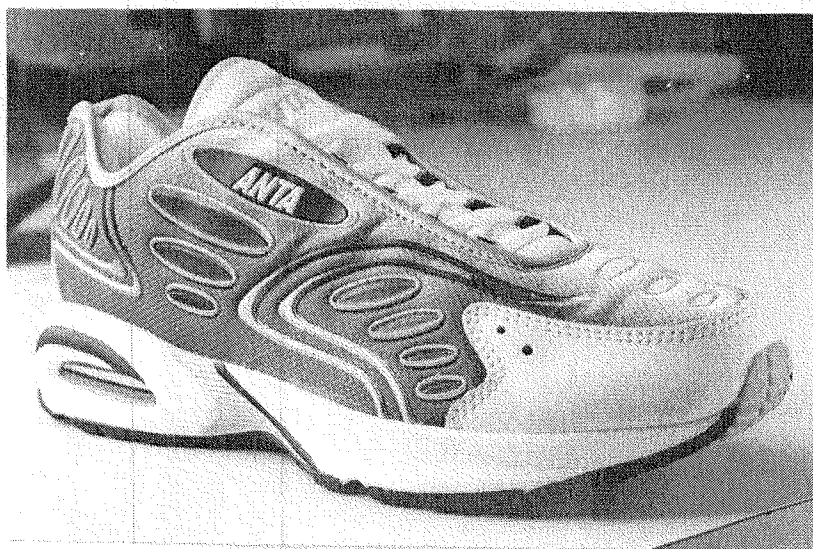
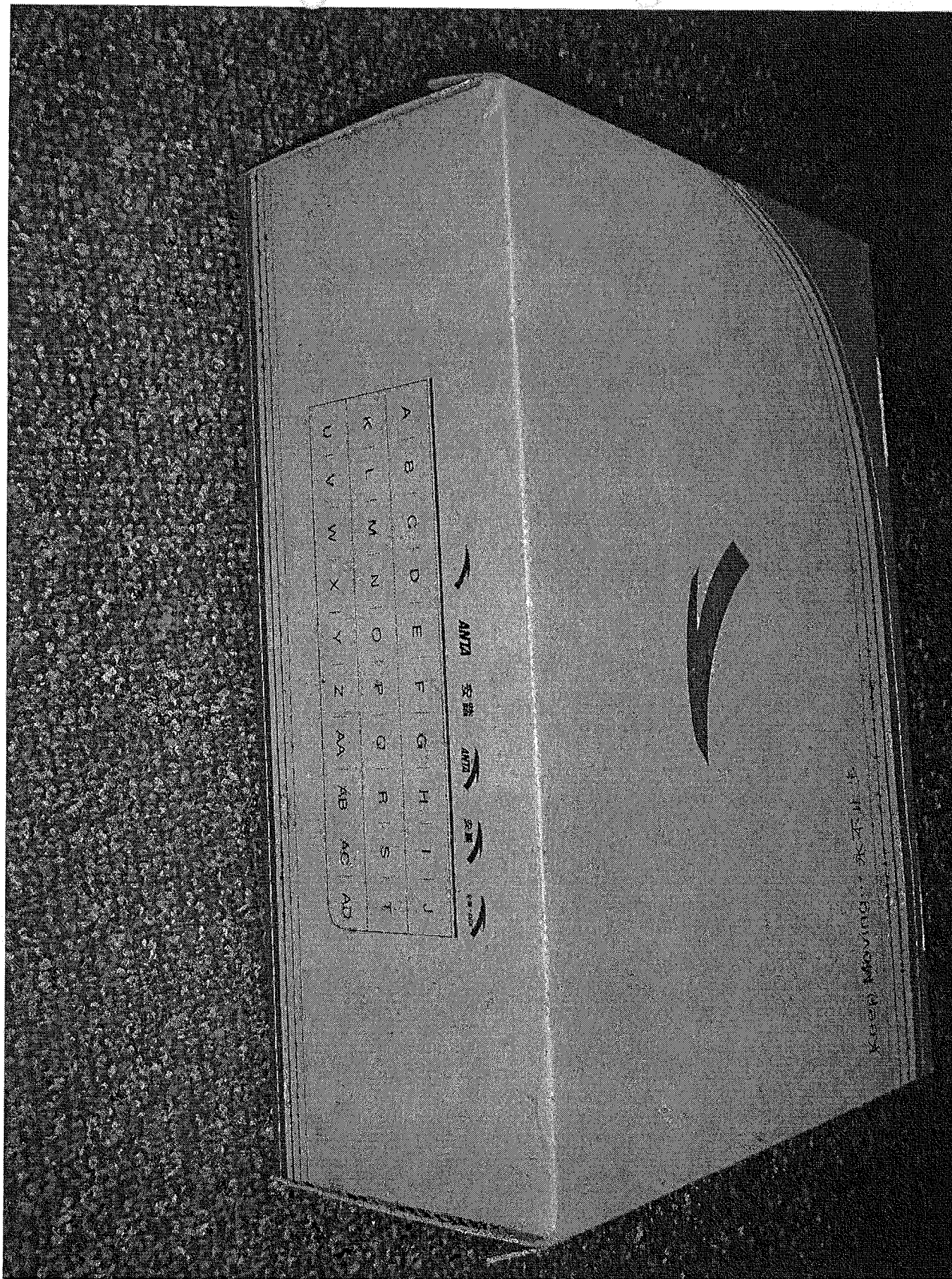




Exhibit B







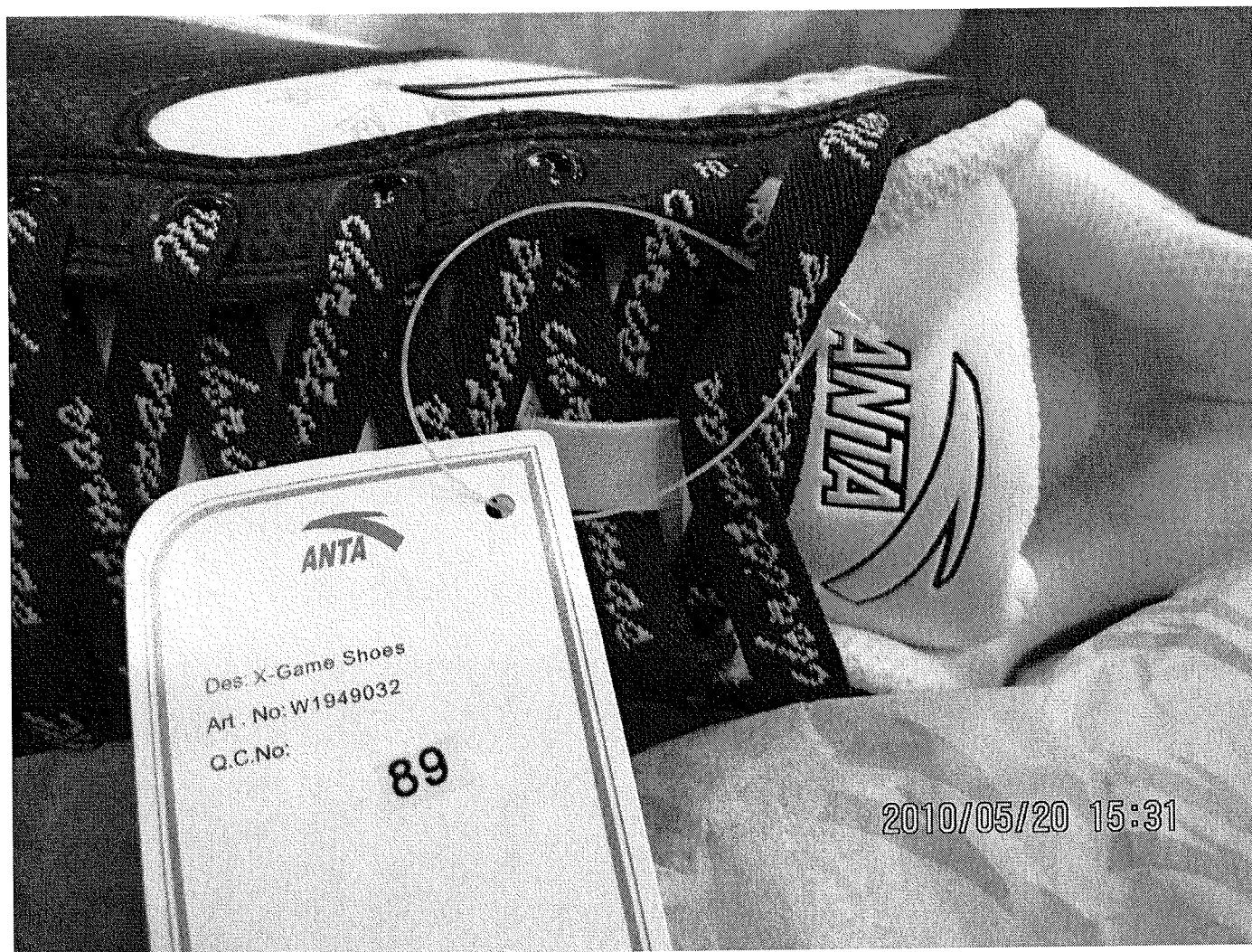
 ANTA 安踏  ANTA 安踏  安踏  安踏									
A	B	C	D	E	F	G	H	I	J
K	L	M	N	O	P	Q	R	S	T
U	V	W	X	Y	Z	AA	AB	AC	AD

Exhibit C



ANTA
Des: X-Game Shoes
Art. No: W1949032
Q.C.No:

89

2010/05/20 15:31





ANTA

XL

<http://ee.anta.com>



Des: Men's Ss Polo
Trademark: ANTA

Art No: WSA5013110-3
Color: Brilliant Blue

Size: XL

Component:

Material: 100%Poly



6 903711 578452

Retail Price:

2010/05/20 16:16



2010/05/20 16:17

Exhibit 2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

BROOKS SPORTS, INC.,

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Cancellation No.: 92059488

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Mark: ANTA & LOGO
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Brooks Sports, Inc. ("Petitioner") believes that it will be damaged by the continued registration by Anta (China) Co. Ltd. ("Registrant") of the mark (the "Registered Mark") in International Class 25, and covering those goods ("Registered Goods") listed in Registration No. 2,750,817 ("Registration"), and hereby petitions to cancel the Registration. Petitioner and Registrant both design, produce, market and sell athletic shoes, apparel and accessories, and Petitioner asserts this Petition for Cancellation as part of a global controversy with Registrant related to each parties' use of and rights in their respective trademarks and their ability to coexist on various trademark registers. As grounds for its petition, Petitioner alleges as follows:

I. PARTIES

1. Petitioner is a Washington corporation, having a place of business in Seattle, Washington.
2. On information and belief, Registrant is a company of China, having a place of business in Jinjiang City, China.

II. THE REGISTERED MARKS AND REGISTRATIONS

3. Registration No. 2,750,817 issued on August 12, 2003, from Application No. 76/076,957 filed by Anta (Fujian) Shoes Industry Co. Ltd. on June 26, 2000.

4. On or about August 7, 2002, Registrant, or its predecessor in interest, Anta (Fujian) Shoes Industry Co. Ltd., filed a Declaration in support of a Statement of Use in support of Application No. 76/076,957 ("Statement of Use Declaration").

3-5. As evidence of use in support of the Statement of Use Declaration, Registrant, or its predecessor in interest, Anta (Fujian) Shoes Industry Co. Ltd., submitted **Exhibit A**.

4-6. According to the Trademark Assignment Abstract of Title for the Registration No. 2,750,817, Anta (Fujian) Shoes Industry Co. Ltd. executed a document on December 29, 2006, which assigned the entire interest in the Registration No. 2,750,817 to Anta (China) Co., Ltd. Registrant.

5-7. According to the Trademark Assignment Abstract of Title for the Registration No. 2,750,817, the document assigning the Registration No. 2,750,817 to Anta (China) Co. Ltd. Registrant was recorded on January 3, 2007.

6-8. On August 13, 2008, Registrant filed an Affidavit of Use in support of a Combined Declaration of Use and Incontestability under Sections 8 & 15 for the Registration No. 2,750,817 ("8 & 15 Affidavit").

7-9. In the 8 & 15 Affidavit, Registrant attested that it had "...continuously used the mark in commerce on or in connection with the goods and/or services [in the Registration] for five (5) consecutive years ..."

8-10. In the 8 & 15 Affidavit, Registrant also attested that it was "using the mark in commerce on or in connection with the goods and/or services identified" in the Registration.

9-11. As evidence of use in support of the 8 & 15 Affidavit, Registrant submitted **Exhibit BA**.

~~10.12.~~ On February 7, 2013, Registrant filed a Combined Declaration of Use and Application for Renewal of Registration of Mark under Sections 8 & 9 for the Registration No. ~~2,750,817~~ ("8 & 9 Declaration").

~~11.13.~~ In the 8 & 9 Declaration, Registrant attested that "...the mark is in use in commerce on or in connection with the goods/services identified" in the Registration.

~~12.14.~~ As evidence of use in support of the 8 & 9 Declaration, Registrant submitted **Exhibit CB.**

III. CLAIMS

A. ABANDONMENT

~~13.15.~~ Petitioner realleges and incorporates by reference the preceding allegations of its First Amended Petition for Cancellation.

~~14.16.~~ On information and belief, Registrant has ceased using the Registered Mark, in commerce, in connection with the Registered Goods, with no intent to resume use of the Registered Mark.

~~15.17.~~ On information and belief, Registrant has discontinued use of the Registered Mark, in commerce, for a period of at least three consecutive years.

~~16.18.~~ On information and belief, Petitioner believes that Registrant does not have business operations in the United States, supporting the conclusion that use of the Registered Mark was discontinued, or never commenced, in commerce for such a period following the registration date for the Registered Mark.

~~17.19.~~ The continued registration of the Registered Mark would prevent Petitioner from exercising exclusive control over the goodwill and reputation associated with Petitioner's marks.

~~18-20.~~ As Registrant abandoned the Registered Mark in connection with the Registered Goods, and does not have an intent to resume use of the Registered Mark in connection with the Registered Goods, pursuant to Section 14 of the Trademark Act, 15 U.S.C. § 1064, the Registration should be cancelled.

B. REGISTERED MARK NOT IN USE

21. Petitioner realleges and incorporates by reference the preceding allegations of its First Amended Petition for Cancellation.

~~19-22.~~ On information and belief, as of the filing date of the Statement of Use Declaration, Registrant, or its predecessor in interest Anta (Fujian) Shoes Industry Co. Ltd., was not using the Registered Mark, in commerce, in connection with the Registered Goods.

~~20-23.~~ On information and belief, as of the filing date of the 8 & 15 Affidavit, Registrant was not using the Registered Mark, in commerce, in connection with the Registered Goods.

~~21-24.~~ On information and belief, prior to filing the 8 & 15 Affidavit, Registrant was not continuously using the Registered Mark, in commerce, in connection with the Registered Goods for a period of five (5) years prior to filing the 8 & 15 Affidavit.

~~22-25.~~ On information and belief, as of the filing date of the 8 & 9 Declaration, Registrant was not using the Registered Mark, in commerce, in connection with Registered Goods.

26. On information and belief, Registrant has never used the Registered Mark, in commerce, in connection with the Registered Goods.

~~23-27.~~ As Registrant, or its predecessor in interest Anta (Fujian) Shoes Industry Co. Ltd., was not using the Registered Mark, in commerce, in connection with the Registered Goods as of the date of filing the Statement of Use Declaration, the Registration should be cancelled.

24-28. As Registrant was not using the Registered Mark, in commerce, in connection with the Registered Goods as of the date of filing the 8 & 15 Affidavit, the Registration should be cancelled.

25-29. As Registrant was not using the Registered Mark, in commerce, in connection with the Registered Goods as of the date of filing the 8 & 9 Declaration, the Registration should be cancelled.

30. As Registrant has never used the Registered Mark, in commerce, in connection with the Registered Goods, the Registration should be cancelled.

C. FRAUD ON THE TRADEMARK OFFICE

31. Petitioner realleges and incorporates by reference the preceding allegations of its First Amended Petition for Cancellation.

32. On information and belief, as of the filing date of the Statement of Use Declaration, Registrant, or its predecessor in interest Anta (Fujian) Shoes Industry Co. Ltd., was not using the Registered Mark, in commerce, in connection with the Registered Goods.

33. On information and belief, as of the filing date of the 8 & 15 Affidavit, Registrant was not using the Registered Mark, in commerce, in connection with the Registered Goods.

34. On information and belief, prior to filing the 8 & 15 Affidavit, Registrant was not continuously using the Registered Mark, in commerce, in connection with the Registered Goods for a period of five (5) years prior to filing the 8 & 15 Affidavit.

35. On information and belief, as of the filing date of the 8 & 9 Declaration, Registrant was not using the Registered Mark, in commerce, in connection with the Registered Goods.

36. On information and belief, Registrant, or its predecessor in interest Anta (Fujian) Shoes Industry Co. Ltd., submitted a false Statement of Use Declaration in support of the Application with the intent to procure the Registration.

37. On information and belief, Registrant, or its predecessor in interest Anta (Fujian) Shoes Industry Co. Ltd., knowingly and willfully submitted a false Statement of Use Declaration in support of the Registration with the intent to procure the Registration.

38. On information and belief, Registrant's, or its predecessor in interest Anta (Fujian) Shoes Industry Co. Ltd.'s, false Statement of Use Declaration was material to procuring the Registration.

39. On information and belief, Registrant submitted a false 8 & 15 Affidavit in support of the Registration with the intent to maintain the Registration.

40. On information and belief, Registrant knowingly and willfully submitted a false 8 & 15 Affidavit in support of the Registration with the intent to maintain the Registration.

41. On information and belief, Registrant's false 8 & 15 Affidavit was material to maintaining the Registration.

42. On information and belief, Registrant submitted a false 8 & 9 Declaration in support of the Registration with the intent to maintain the Registration.

43. On information and belief, Registrant knowingly and willfully submitted a false 8 & 9 Declaration in support of the Registration with the intent to maintain the Registration.

44. On information and belief, Registrant's false 8 & 9 Declaration was material to maintaining the Registration.

~~26-45.~~ Accordingly, Registrant is not entitled to maintain the Registration and the Registration should be cancelled pursuant to § 14 of the Lanham Act, 15 U.S.C. § 1064.

IV. REQUEST FOR RELIEF

WHEREFORE, Petitioner requests that Registration No. 2,750,817 be canceled.

VI. FEES

The \$300.00 fee for this First Amended Petition for Cancellation has been electronically submitted ~~with this filing~~.

~~Petitioner hereby appoints the law firm of Perkins Coie LLP, and each of William C. Rava
Alexander J.A. Garcia, Patchen M. Haggerty, Caroline Camp, David L. Cromwell,
Alexander J.A. Garcia, Lynne E. Graybeal, John P. Halski, Julianne A. Henley, Jason S.
Howell, Jennifer L. Jolley, Winfield B. Martin, Reagan T. Roth, Heidi L. Sachs, Grace Han
Stanton, and James L. Vana, each of whom is admitted to practice law in the State of
Washington and/or another state of the United States, with full power of substitution and
revocation, to represent Petitioner in connection with the Cancellation.~~

~~DATED: June~~ January 30~~22~~, 2016~~4~~

CERTIFICATE OF SERVICE

I hereby certify that this FIRST AMENDED
PETITION FOR CANCELLATION is being
transmitted to Timothy J. Lockhart, Willcox &
Savage PC, 440 Monticello Avenue, Suite 2200,
Norfolk, Virginia 23510-2243 to counsel's email
address of record tlockhart@wilsav.com and
pursuant to the mutual agreement of the parties to
electronic service.

~~I hereby certify that this PETITION FOR
CANCELLATION is being deposited with the
United Parcel Service on July 1, 2014, in an
envelope addressed to:~~

~~ANTA (CHINA) CO., LTD.
Chidian Town
Dongshan Industrial Zone
Jinjiang City
CHINA~~

Signature: _____

Printed Name: _____

Respectfully submitted,

PERKINS COIE LLP

By: /s/ William C. Rava
William C. Rava
Alexander J.A. Garcia
Jonathan P. Goddard

Attorneys for Opposer
1201 Third Avenue, 49th Floor
Seattle, Washington 98101

Phone: (206) 359-8000